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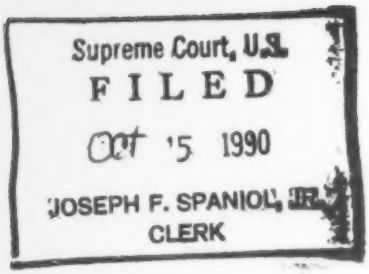

No. 90-365

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1990

Shahsultan Jaffer,

Petitioner,

vs.

Gilbert K. Granet, et. al.,
Judge Marvin Aspen, and
Robert F. Klimek, et. al., and
Judge Nicholas Bua,

Respondents

REPLY TO BRIEF IN OPPOSITION

"IN RE SHAHSULTAN JAFFER, PETITIONER",
PETITION ON WRIT OF PROHIBITION TO THE UNITED
STATES COURT OF APPEALS FOR THE SEVENTH
CIRCUIT AND WRIT OF MANDAMUS TO UNITED STATES
ATTORNEY GENERAL

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REPLY STATEMENT

Respondents' Brief in Opposition, containing numerous misstatements of facts and law, and references to irrelevant cases, is nonresponsive and total fabrication of nonexistence facts in a futile effort to justify their "affirmative misconduct" in the courts below and filed in violation of ethical and court rules standards set forth by this Court. It must be stricken on the grounds that it is a "sham," and to be used as evidence of their continued misconduct. Respondents must be found in contempt of this Court for making false statement (see, A-4) and pursuant to Federal Rule of Civil Procedure 11, an "appropriate sanction," must be imposed upon respondents and their counsel, granting petitioner omnibus relief

under the Federal Tort Claim Act (see, A-3).[1]

Respondents neither explain their premise nor the logic of their conclusion. The only possible explanation for this assertion must be that either (i) respondents did not read the entire petition, or (ii) allegations made in the petition are indisputable. For had the respondents read the petition, they would have found--pages of detailed analysis justifying the relief.

This is a case requiring an application of the principle that governs the determination of the existence of "federal

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[1] "Ignorance of the law is no excuse for men in general. It is less an excuse for men whose special duty is to apply it, and therefore to know and observe it. When they pass limit of their authority, so far at any rate that their action exceeds honest error of judgment and amounts to abuse of their office and its function...For their sworn oath and their first duty are to uphold the Constitution...This applies to all the cases require to be decided on the question of criminal intent." Screws v. United States, 325 U.S. 91.

action." An effort by the federal government, through judicare act, to authorize, encourage, or otherwise support discrimination in a particular facet of life constitutes illegal federal involvement in those pertinent private act of discrimination that subsequently occurred.[2]

This court may and should take judicial notice of the following rebuttal statement:

Petitioner was a 5% shareholder of Maxitron Corporation. However, other derivative shareholders, with court approval, were awarded compromise settlements by selling back their shares to the corporation,

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[2] The evidence is more than convincing that the federal officials willfully, or at least with wanton disregard of the consequences violated a plain constitutional right of a citizen. The significant question, rather, is whether law enforcement officers shall be allowed to violate with impunity the clear constitutional rights of the inarticulate and the friendless.

making petitioner a 10% shareholder of Maxitron Corporation (see, Pet. p.9).

Stockholder's derivative action was commenced through counsel and not pro se, as stated by respondents (see, Pet. A-1, and A-23), otherwise there would have been no need for petitioner to seek the leave from the courts below to file a pro se appearance. The docket entries in the United States District Court for the Northern District of Illinois shows the following names appearance as attorneys for plaintiff: "Israel Weinstock, Kevin Flynn, Richard A. Jaffe, Matthew G. Dineen and Robert Chapman."

Jaffer II was dismissed once only by the court, before joinder of issue (see, Pet. p.A-1), without any support in law or fact, without any notice and while petitioner was represented by counsel.

Jaffer I was shareholders derivative

action and Jaffer II was freeze out of minority shareholder, individually; both filed by counsel (see, Pet. pp. 8, 11). The reason for the dismissal of this action is unknown to petitioner (see, Pet. A-1) and in no language of any corporation law the both can be defined as same issue.

It is indisputable that respondents stated so called "well-settled, applicable law that non-lawyers may not represent corporations and may not bring actions pro se in representative capacities" does not only violate the state and federal constitutions and statutory (28 USC 1654) mandates but also violate antitrust law of this nation. The federal and state constitutions prohibits legislature or judiciary from passing a private or local bill that would grant any exclusive privilege, immunity, license or franchise to the bar and/or its members to a

legal forum funded by public tax dollars (see, Pet. pp. 52, A-38).

An officer or employee of the United State has no discretion to commit illegal acts. Whether the act done by the official was judicial or not is to be determined by its character, and not by the character of the agent.

Therefore, this Court must exercise its appellate jurisdiction and revise and correct the proceedings in a cause already instituted and issue a prohibition and mandamus relief to this victim of judicial conspiracy, directing the performance of a duty, not depending on judicial discretion, but on particular acts of congress and the general principles of law.[3]

[3] Where an appellant charges government officials with constitutional or statutory violation, Mandamus is an appropriate remedy for equitable relief. 28 USC 1361; Mandamus (64).

The complaint was also filed individually as well.

The court in Traguth v. Zuck, 710 F.2d 90, 94 (1983) stated that:

> "Rule 6(b) does not, however, vest a court with discretion to impose a special condition on the responding party which violates a statutory rights Under 28 USC 1654, a party to a civil action in federal court has the right to appear pro se. The right to self-representation "is a right of high standing, not simply a practice to be honored or dishonored by a court depending on its assessment of the desiderata of a particular case." O'Reilly v. New York Times Co., 692 F.2d 863, 867 (2nd Cir,1982)

Courts are without power to dismiss actions before joinder of issue and during an interlocutory appeal.[4]

> "An interlocutory appeal, though limited in scope, is nevertheless an appeal so as to preclude the application of an

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[4] Motion to dismiss for want of prosecution did not lie where issue had not been joined. Dailey v. Smiley, 1978, 65 A.D.2d 915, 410 N.Y.S.2d 468; Gorton v. Nelson, 1972, 39 A.D.2d 799, 332 N.Y.S.2d 241.

automatic dismissal rule for failure to bring a case to trial within the stated time when the effect of the interlocutory appeal is to stay further proceedings in the trial court." Allied Gas and Chemical Co., Inc. v. federal Mut.Ins. Co., 365 N.W.2d 26, clarifying Koss v. City of Cedar Rapids, 300 N.W.2d 153.

> "Also, a dismissal or nonsuit for want of prosecution may be set aside where there was no intentional or willful disregard of the directions of the court, and it does not appear that a further postponement of the controversy on its merits would result in prejudice or hardship to any of the parties." Polowick v. Meredity Construction Co., 332 N.E.2d 17, 29 Ill.App.3d 1092.

Respondents in conspiracy with the courts below with their full coercive power of government deliberately and willfully prevented petitioner from properly prosecuting her actions; and under those circumstances petitioner believes that she had prosecuted the appeal the only way she could by invoking common law doctrine of res ipsa loquitur. The evidence suggests mendacity on part of respondents and the

courts below, therefore, they have not destroyed the inference or the presumption and must submit to a summary judgment in favor of the party raising the doctrine (see Pet.pp. 15, 20, 22, 23, 33, 42).[5]

By its orders the appellate court meant to foreclose petitioner from following precisely the same avenue with regard to prosecution of her actions as given to all litigants in the federal courts.

Enacted by Congress to regulate the conduct of federal judges, 28 USC 455(a), and the grounds for recusal did exist, requiring the appellate court to recuse itself in proceedings in which its impartiality might

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[5] Manifest disregard of applicable law by the court and a denial of due process, is a "manifest injustice" as a matter of law under rule providing that to correct manifest injustice the court must set aside the judgment and provide vindicative damages as remedy to the injured party to vindicate violation of constitutional rights.

reasonably be questioned, the court refused to recuse itself, thus the statute took effect and the panel had no authority to decide the appeal. The appellate court, sitting in judgment of its own cause, violated petitioner's 1st, 5th and 14th Amendment rights of access to the courts for a full and fair hearing, before an impartial tribunal, on the merits of her claims and her constitutional, statutory and common-law right to unbiased appellate review. The lower courts' "serious abuse of judicial power," should be shocking to the judicial conscience of this Court.

This Court stated in Ex parte Wall, 107 U.S. 265, 288 (1882) that:

> "the courts ought not to hesitate...to protect themselves from scandal and contempt, and the public from prejudice, by removing grossly improper persons from participation in the administration of the laws."

The courts' orders and voluminous

courts' files shows substantial evidence of special treatment and that petitioner was deliberately, in bad faith and in express violation of a rule of law as practiced in our adversarial system, improperly prevented from prosecuting these actions.[6]

The actions of the courts below, and respondents evidence a fundamental disrespect for a rule of law, judges and the bar must also abide by the law, whether they agree with the law or not. The privilege of the bar and the court is limited by the

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[6] An action will not be dismissed where plaintiff is prevented by causes beyond his control from bringing the case to trial. An action will not be dismissed for failure to prosecute when prosection was or is impossible or impracticable, and this is so whether the impossibility exists because of total lack of jurisdiction or because proceeding to trial would be both impracticable and futile. California Michigan Land & Water Co. v. City of Pasadena, 70 S.Ct. 671,339 U.S. 937.

fundamental requirements of fairness. It is preposterous to suggest that judges and lawyers who broke state and federal laws and cannon of ethics, are somehow entitled to be treated differently from others for their failure to honor people's rights and uphold the laws of our nation.

The courts did not attempt to establish truth or lack of actual malice as a defense. The judges and lawyers intentionally falsifying or recklessly disregarding the truth is a clear intent to deprive petitioner of equal protection of the laws and under Rule 404(b) of the Federal Rules of Evidence, the judges judicial acts and lawyers' false statements are clearly admissible as proof of their class based discriminatory motives.[7]

[7] If the policies underlying the findings requirement are to be satisfied then the district court itself must document its reasoning. Neither the parties nor the reviewing court should be left to surmise how

In explaining restraints on government power, this Court in Hurtado v. People of California, 110 U.S. 516, 535-36, stated that:

> "Law is something more than mere will exerted as an act of power. It must not be a special rule for a particular person or a particular case...thus excluding, as not due process of law, ...and acts directly transferring one man's estate to another,...partial and arbitrary exertions of power...enforcing its edicts to the injury of the persons and property of its subjects, is not law, whether manifested as the decree of a personal monarch or of an impersonal multitude."

The courts below have promulgated an official policy to harass and deprive the public who access court pro se of impartial tribunals and fundamental justice; and is not only aimed at the undersigned but the whole

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the district court reached its final conclusion. It is not the function of the reviewing court to search the record and analyze the evidence in order to supply findings which the trial court failed to make. La Salle Extension University v. FTC, 627 F. 2d 481.

group with whom the victim is identified.

In Turpin v. Mailet, 619 F.2d 196 (2nd Cir.1980), this court interpreted the type of conduct on the part of municipal employees that is necessary to constitute an official policy within the meaning of Monell. The court found that if the municipality impliedly or tacitly authorized, approval or encouraged harassment of the plaintiff, it promulgated an official policy within the meaning of Monell at 201 (Monell v. New Your City Department of Social Services, 436 U.S. 658, 98 S.Ct. 2018 (1978).

This Court in Shelly v. Kraemer, 334 U.S. 1, 13, held that:

> "the action of the lower courts in granting unconstitutional relief would constitute state action against the party (deprived of the rights protected by the Constitution), and in violation of the provisions of the Fourteenth Amendment. The Constitution confers upon no individual the right to demand action by the State which results in the denial of equal protection of the laws

to other individuals..." 334 U.S. at 22.

This Court in Screws v. United States, 325 U.S. 91, 104-105, declared that:

> "The Constitutional requirement that a criminal statute be definite serves a high function. It gives a person actin with reference to the statute fair warning that his conduct is within its prohibition. This requirement is met when a statute prohibits only "willful" acts in the sense we have explained. One who does act with such specific intent is aware that what he does is precisely that which the statute forbids. He is under no necessity of guessing whether the statute applies to him. (see Connally v. General Construction Co., 269 U.S. 385) for he eitner knows or acts in reckless disregard of its prohibition of the deprivation of a defined constitutional or other federal rights. See Gorin v. United States, 312 U.S. 19, 27-28.

Respondents in conspiracy with the courts below have knowingly and unconscionably dragged petitioner through the courts for four years, unfairly exacted her property, exacted enormous expense, causing humiliation, embarrassment, mental distress

and interfered with her normal life; and unjustly enriching themselves at petitioner's expense. Now they are seeking this Court to join the judicial conspiracy by providing no remedy to this victim of high level crime.

Petitioner has indisputably established that initiation of prosecution by the Attorney General is a preemptory and non-discretionary duty and petitioner entitlement is clear under 18 USC Sections 591/592 and 3332 (see, A-6, Pet. pp. A-49, A-52).

If not petitioner, who can be said to have a cause of action to insist that the Act be carried out in accordance with its terms? Petitioner is a victim of the alleged crime. Her is far more than a generalized grievance. The controversy is concrete. No separation of powers question or matter of prudential concern is involved. If an Attorney General ignores his duty to investigate and report to

Congress, Congress remains uninformed and cannot act. Thus, if the Act is enforceable at all it must be through those, like petitioner here, who have supplied specific information and pursue their application for an investigation. There is a well established rule that when the Constitution or a statute confers procedural rights on certain person, those persons have standing to insist that the government follow proper procedures in reaching a substantive decisions, even without any showing that following different procedures would have affected the final outcome.

For the courts to unjustly dispose a case is a fraud on the court and force a litigant to check the constitutionality of the court's action through multiple litigations, is an unlawful exaction because such exaction constitutes a deprivation of

property under due process. Therefore, it is improvident and lacking in dignity for respondents to even suggest to this Court to disregard constitutional and statutory violations, considering them moot because the courts below in order to avoid accountability for their "affirmative misconduct" have unjustly disposed the cases!!

The circumstances in the instant actions are so exceptional as to justify drastic and extraordinary remedies for extraordinary causes.

CONCLUSION

When controlling legal principles are repudiated by Circuit Court judges, when constitutional rights are trampled underfoot and when the system which has been contrived to resolve controversy itself becomes the controversy and ignore the very bands of society, it sets a pernicious example to the

insubordinate and dangerous elements of the body politic. It manifests a want of fidelity to the system of lawful government which they have sworn to uphold and preserve

Petitioner was compelled to seek this Court's appellate jurisdiction and the failure of this court to exercise its equitable powers under federal jurisdictiona statutes to grant the relief requested, will not only leave petitioner without a remedy t vindicate the deprivation of her constitutional rights but also put this Court's approval and encouragement behind such behaviors, in violation of the state an federal constitutions, only because the officers violating such rights were wearing the robes and they are officers of the court

For the reasons set forth above and in the interest of justice petitioner respectfully urges this Court that (i) all

relief requested be granted in its entirety or any other alternative Writ as the issues presented in the captioned actions must be decided immediately to prevent continued and further injury to petitioner, (ii) to protect petitioner from any significant prejudice or inconvenience by reason of her being impleaded, and (iii) to award just and proper treble damages, costs of all proceedings and reasonable attorneys fees.

Respectfully submitted,

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October 8, 1990

APPENDIX

A-1

ABADY & JAFFE
342 Madison Avenue
New York, N.Y. 10173

December 23, 1986

RE: Retention of Abady & Jaffe to prosecute action against Maxitron Corp. et. al.

Dear Ms. Jaffer:

"This agreement shall set forth the terms of our representation of you regarding the above referenced action.

"We shall prosecute the action described above on your behalf. We shall be paid on a contingency basis, and no attorneys fees shall be paid to us as compensation unless you prevail in the Action. As compensation to us for attorneys fees, we shall receive one-third (33 and 1/3%) of the total recovery without condition or qualification. Additionally, you shall be responsible for all disbursements and expenses incurred by this law firm, including,but not limited to, investigator's fees, expert witness fees, filing fees, deposition an trial transcript costs, messenger and courier charges, travel expenses, postage an other disbursements and expenses incidental to our representation of you, which shall be payable as these are incurred, up to $10,000, the balance of disbursements, if any, payable out of the proceeds of the recovery.

"Any recovery or award paid shall be delivered to and made payable to this law firm. You hereby authorize us to deduct from the recovery, after deducting disbursements,

the amount of one-third (33 and 1/3% for our attorneys fees,a nd the balance shall be remitted to you.

"Your signature below will acknowledge your assent and consent to the terms and provisions of this agreement.

"We look forward to representing you in this action."

Very truly yours.
ABADY & JAFFE

Signed by: Richard Jaffe
A Member of the firm

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Case Number: 86 C 6014
Case Title: Shahsultan Jaffer v. Gilbert Granet, et. al.
Dated: October 23, 1987

Judge: Hon. Marvin E. Aspen

O R D E R

"Status hearing set for October 30, 1987 at 10:00 A.M. And if plaintiff is represented at that time by local counsel, the court will grant plaintiff's motion to vacate.

"Currently before the court is the motion of plaintiff Shahsultan Jaffer to vacate this court's dismissal of this case for want of prosecution on November 14, 1986, because she had failed to secure local counsel to represent her. At that status hearing it was represented to the court that plaintiff had found it difficult to retain local counsel until her New York counsel Mr. Weinstock, who was seriously ill in the hospital, had 'signed off' on the case. Counsel for defendants Granet, Jansen, W.S.I. Acquisition, Inc. and W.S.I. Investors, Inc. moved to dismiss the case and stated, 'I do not believe that Ms. Jaffer will be denied her day in court should she decide to refile in this court.' This court then indicated that this case would be dismissed for want of prosecution but added that '[c]ertainly within a reasonable period of time I will reinstate this case if plaintiff indicates that she is serious about pursuing it. Counsel for Maxitron, which currently opposes

this motion to vacate, was present at that hearing and did not object to the court's disposition of the case on those terms. Plaintiff noticed her motion to vacated on February 18, 1987, only three months after our dismissal, We do not find that three months is unreasonable; accordingly, a status hearing is set for October 30, 1987, at 10:00 a.m., and if plaintiff is represented at that time by local counsel, we will grant plaintiff's motion to vacate. It is so ordered."

FALSE STATEMENTS - 18 USC Section 1001 states:

> "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, factious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

FEDERAL TORT CLAIM ACT - 28 USC 2679(b)(2) (1988):

> "Federal employees absolute immunity from personal liability for common law torts committed do not extend to so-called constitutional torts or to violations of federal statute that otherwise authorize suit against an individual. In those situations, the federal employee may be sued personally and held personally liable likewise, the 1988 amendment does not preclude an injured person from seeking injunctive or other appropriate equitable relief against either the Untied States or the federal employee."

The intention infliction of emotional distress has also been held actionable under

the Act.

If the underlying negligence or wrongful conduct, standing alone, caused injury and thus constituted an independent actionable cause, then the exclusions may not be applicable even though other breaches of duty or wrongful conduct by the government constituting one of the excluded torts may also have been present. In other words, even though recovery for one aspect of the government's conduct is barred by the exclusions, a claimant is not barred "from pursuing a distinct claim arising out of other aspects of the government's conduct. See Block v. Neal, 103 S.Ct. 1094.

ETHICS IN GOVERNMENT ACT, 28 USC 592(a):

> "Where a party invoking the Ethic in Government Act, claims that high officials of the United States Government authorized or negligently permitted the gross violation of civil rights which occurred and that those officials have conspired to conceal their involvement and asks the Attorney

General to investigate those charges and to report to the Special Prosecutors Division of court created under that Act, the Attorney General has statutory duties to do so."

The provision of the act does not permit the Attorney General to adopt a definition of "specific information" different from the standard set by Congress and no issue as to credibility is apparent in this case.

The Act creates procedural rights, and there must be redressed or the entire statutory scheme, designed to focus attention on claims of criminal misconduct in high places, is meaningless. To hold otherwise would be to declare that the Ethics in Government Act is merely a pious statement of pure political import designed to assuage the public's concern for abuses of trust that followed Watergate.